State Law Library of Montana

MONTANA LEGISLATIVE HISTORY

Chapter 44 Session L 2005
Bill House 26 Senate ____

History and final status sheet X
Introduced bill X
Fiscal note NA
Third reading bill X
Final version of bill X

House Committee on Human Services
Hearing date(s)* 1-26 2-2
Executive action (vote) date(s)* 2-2
Comm. Report 2-4
Floor 2nd reading & vote 2-8
Floor 3rd reading & vote 2-9

Senate Committee on Judiciary
Hearing date(s)* 3-4 3-8
Executive action (vote) date(s)* 3-8
Comm. Report 3-8
Floor 2nd reading & vote 3-9
Floor 3rd reading & vote 3-10

Conference or Free Conference Comm. ____ Yes X No
Hearing date(s)* ____
Executive action (vote) date(s)* ____

* Includes minutes, exhibits, roll call, visitors register, and vote sheet if available.

Did this bill originate in an interim committee? ____ Yes X No
Committee ____ Report ____

NOTES: Restrict Liability of Health Care Provider for Ostensible Agency

State Law Library of Montana

Compiled by: rg
Date: 4-12-2016

HB 25 INTRODUCED BY ROBERTS *LC0461 DRAFTER: MACMASTER*

LIMIT HEALTH CARE PROVIDER LIABILITY FOR OTHER PERSON'S ACT OR OMISSION

BY REQUEST OF LEGISLATIVE COUNCIL

11/29	INTRODUCED		
12/27	REFERRED TO HUMAN SERVICES		
1/26	HEARING		
2/04	COMMITTEE EXECUTIVE ACTION—BILL PASSED AS AMENDED	16	0
2/04	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/09	2ND READING PASSED	99	1
2/10	3RD READING PASSED	96	1
	TRANSMITTED TO SENATE		
2/22	REFERRED TO JUDICIARY		
3/04	HEARING		
3/08	COMMITTEE EXECUTIVE ACTION—BILL CONCURRED	11	0
3/08	COMMITTEE REPORT—BILL CONCURRED		
3/09	2ND READING CONCURRED ON VOICE VOTE	50	0
3/10	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE		
3/10	SENT TO ENROLLING		
3/11	RETURNED FROM ENROLLING		
3/14	SIGNED BY SPEAKER		
3/14	SIGNED BY PRESIDENT		
3/15	TRANSMITTED TO GOVERNOR		
3/24	SIGNED BY GOVERNOR		
3/24	CHAPTER NUMBER ASSIGNED		
	CHAPTER NUMBER 43		
	EFFECTIVE DATE: 7/01/2005 - ALL SECTIONS		

HB 26 INTRODUCED BY GOLIE *LC0460 DRAFTER: MACMASTER*

RESTRICT LIABILITY OF HEALTH CARE PROVIDER FOR OSTENSIBLE AGENCY

BY REQUEST OF LEGISLATIVE COUNCIL

11/29	INTRODUCED		
12/27	REFERRED TO HUMAN SERVICES		
1/26	HEARING		
2/04	COMMITTEE EXECUTIVE ACTION—BILL PASSED AS AMENDED	16	0
2/04	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/08	2ND READING PASSED	91	8
2/09	3RD READING PASSED	90	6
	TRANSMITTED TO SENATE		
2/22	REFERRED TO JUDICIARY		
3/04	HEARING		
3/08	COMMITTEE EXECUTIVE ACTION—BILL CONCURRED	11	0
3/08	COMMITTEE REPORT—BILL CONCURRED		
3/09	2ND READING CONCURRED ON VOICE VOTE	50	0
3/10	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE		
3/10	SENT TO ENROLLING		
3/11	RETURNED FROM ENROLLING		
3/14	SIGNED BY SPEAKER		
3/14	SIGNED BY PRESIDENT		
3/15	TRANSMITTED TO GOVERNOR		
3/24	SIGNED BY GOVERNOR		
3/24	CHAPTER NUMBER ASSIGNED		
	CHAPTER NUMBER 44		
	EFFECTIVE DATE: 7/01/2005 - ALL SECTIONS		

HB 27 INTRODUCED BY NOENNIG *LC0407 DRAFTER: ERICKSON*

REVISE TIMING OF FINANCIAL REVIEWS BY HISTORICAL SOCIETY

BY REQUEST OF MONTANA HISTORICAL SOCIETY

9/16	FISCAL NOTE NEEDED		
11/29	INTRODUCED		
12/27	REFERRED TO STATE ADMINISTRATION		
1/12	HEARING		
1/12	COMMITTEE EXECUTIVE ACTION—BILL PASSED	16	0

HOUSE BILL NO. 26

INTRODUCED BY G. GOLIE

BY REQUEST OF THE LEGISLATIVE COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT FOR PURPOSES OF A MEDICAL MALPRACTICE CLAIM, LIABILITY MAY NOT BE IMPOSED ON A HEALTH CARE PROVIDER FOR AN ACT OR OMISSION BY A PERSON OR ENTITY ALLEGED TO HAVE BEEN AN OSTENSIBLE AGENT OF THE HEALTH CARE PROVIDER AT THE TIME THAT THE ACT OR OMISSION OCCURRED; AMENDING SECTION 28-10-103, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 28-10-103, MCA, is amended to read:

"28-10-103. Actual versus ostensible agency -- limitation. (1) An agency is either actual or ostensible. An agency is actual when the agent is really employed by the principal. An agency is ostensible when the principal intentionally or by want of ordinary care causes a third person to believe another to be ~~his~~ the principal's agent ~~who~~ when that person is not really employed by ~~him~~ the principal.

(2) For purposes of a malpractice claim, as defined in 27-6-103, liability may not be imposed on a health care provider, as defined in 27-6-103, for an act or omission by a person or entity alleged to have been an ostensible agent of the health care provider at the time that the act or omission occurred."

NEW SECTION. **Section 2. Applicability.** [This act] applies to malpractice claims that arise after [the effective date of this act].

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON HUMAN SERVICES

Call to Order: By **CHAIRMAN ARLENE BECKER**, on January 26, 2005 at 3:00 P.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Arlene Becker, Chairman (D)
Rep. Tom Facey, Vice Chairman (D)
Rep. Don Roberts, Vice Chairman (R)
Rep. Mary Caferro (D)
Rep. Emelie Eaton (D)
Rep. Gordon R. Hendrick (R)
Rep. Teresa K. Henry (D)
Rep. William J. Jones (R)
Rep. Dave McAlpin (D)
Rep. Tom McGillvray (R)
Rep. Mike Milburn (R)
Rep. Art Noonan (D)
Rep. Ron Stoker (R)
Rep. Pat Wagman (R)
Rep. Bill Warden (R)
Rep. Jonathan Windy Boy (D)

Members Excused: None.

Members Absent: None.

Staff Present: Susan Fox, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 24, 1/24/2005; HB 25, 1/24/2005; HB 26, 1/24/2005; HB 59, 1/24/2005; HB 64, 1/24/2005; HB 217, 1/24/2005

Executive Action:

consensus of the major stakeholders. HB 24 was at the request of the Legislative Council and he asked for their support of HB 24.

REP. HARRIS did not close.
{Tape: 2; Side: A; Approx. Time Counter: 2.7 - 5.8}

HEARING ON HB 26

Sponsor: REP. GEORGE GOLIE, HD 20, GREAT FALLS

Opening Statement by Sponsor:

REP. GEORGE GOLIE opened the hearing on **HB 26.** This bill clarifies the liability among health care providers. An ostensible agent is a person who has apparent authority to act for the hospital even if the authority has not been confirmed. HB 26 provides that for purposes of a medical malpractice claim, liability may not be imposed on a health care provider for an act or omission by a person or entity alleged to have been an ostensible agent of the health care provider at the time that the act or omission occurred. He offered an amendment to HB 26 and gave an explanation of the amendment.
EXHIBIT(huh20a08)
{Tape: 2; Side: A; Approx. Time Counter: 5.8 - 8.4}

Proponents' Testimony:

Mark Rumans, M.D. Chief of Staff, Deaconess Billings Clinic, submitted his testimony.
EXHIBIT(huh20a09)
{Tape: 2; Side: A; Approx. Time Counter: 8.4 - 11.5}

Mark Taylor, Montana Hospital Association, asserted that HB 26 will have the greatest impact on hospitals. He did offer a conceptual amendment which would not change the bill as such. It would be amending only the preamble of the bill.
{Tape: 2; Side: A; Approx. Time Counter: 11.5 - 12.6}

Mike Foster, representing four Sisters of Charity Hospitals, concurred with the previous witnesses.

Al Smith, Montana Trial Lawyers Association, supported HB 26 with the amendments which they had proposed. They wanted to be sure that hospitals would continue their current practice of requiring any independent professional who practices at the hospital to carry malpractice insurance.

Mona Jamison, The Doctors' Company, stood in support of the bill and the amendments.

Leo Berry, Utah Medical Insurance Association, was supportive of the bill.

Pat Melby, Montana Medical Association, supported HB 26 and the amendments.

Steve Yeakel, Executive Director, Montana Council for Maternal and Child Health, stood in support of HB 26 and the amendments.

Barbara Ranf, Montana Chamber of Commerce, supported HB 26, the amendments and the next two bills as well.

Jacqueline Lenmark, American Insurance Association (AIA), stated that AIA supports the bill and the amendments.

Joe Mazurek, Blue Cross/Blue Shield of Montana stated that his group supports HB 26 and the next two bills as well.
{Tape: 2; Side: A; Approx. Time Counter: 12.6 - 16.4}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. TOM MCGILLVRAY inquired as to how hospitals screen health care providers to make sure they are qualified. **Dr. Rumans** answered that all hospitals require physicians to go through a credentialing and privileging process where their background, licensing, training, etc. are thoroughly vetted and reviewed by members of the medical staff.

REP. MCGILLVRAY then asked, if the hospital made some error in their credentialing process, would they be liable. **Dr. Rumans** thought that in that situation, there could potentially be some liability on the part of the hospital. He could not comment specifically on the liability in that particular situation.

REP. MCGILLVRAY redirected his question to Mr. Smith. **Mr. Smith** said he did not feel that HB 26 covered this situation unless the hospital had not made sure a physician had purchased medical malpractice insurance.
{Tape: 2; Side: A; Approx. Time Counter: 16.4 - 19.9}

REP. BILL WARDEN asked who had crafted the amendments. **Mr. Smith** stated that the Montana Trial Lawyers Association had done so.

REP. WARDEN followed on and wanted to know the reason for the change on Line 6 of the Title. **Susan Fox, Legislative Staffer,** explained the change was added to the Title of the bill so it would reflect the intention of the amendments. If this would not be appropriate, she welcomed suggestions from Mr. Smith.
{Tape: 2; Side: A; Approx. Time Counter: 19.9 - 21.2}

Closing by Sponsor:

REP. GOLIE offered that in any lawsuit, the big question is, "Who is liable?" The main thrust of HB 26 is to clarify who is liable when many people have attended the patient. This would cut down litigation; and hopefully, this would reduce malpractice premiums and in turn, keep physicians in their current practices.
{Tape: 2; Side: A; Approx. Time Counter: 21.2 - 25.2; Comments: A break was taken and the tape was turned at this time to Side B.}

HEARING ON HB 25

Sponsor: **REP. DON ROBERTS, HD 56, BILLINGS**

Opening Statement by Sponsor:

REP. DON ROBERTS opened the hearing on **HB 25.** This bill would limit health care provider liability for another person's act or omission. This is the bill that is called the "captain of the ship." Currently, the surgeon in the operating room is liable for everyone in the room. HB 25 would change that and say the surgeon is in charge of what he is involved with along with his own staff; but the hospital has their staff and they would be liable for their own people.
{Tape: 2; Side: B; Approx. Time Counter: 0 - 1.1}

Proponents' Testimony:

Pat Melby, Montana Medical Association, told of a case where several errors were made by different providers. The Supreme Court held that the surgeon, even though he had no control over the nurse or the radiologist, was negligent per se, because he was "captain of the ship." HB 25 would give the surgeon the opportunity to explain that it was not his or his staffs' negligence but that it was someone else's negligence that caused the problem. He urged a do pass.
{Tape: 2; Side: B; Approx. Time Counter: 1.1 - 4.3}

HOUSE OF REPRESENTATIVES
Roll Call
HUMAN SERVICES COMMITTEE

DATE 1-26-05

NAME	PRESENT	ABSENT	EXCUSED
REP. ARLENE BECKER, CHAIR	X		
REP. TOM FACEY, VICE CHAIR	X		
REP. DON ROBERTS, VICE CHAIR	X		
REP. MARY CAFERRO	X		
REP. EMELIE EATON	X		
REP. GORDON HENDRICK	X		
REP. TERESA HENRY	X		
REP. WILLIAM JONES	X		
REP. DAVE McALPIN	X		
REP. TOM McGILLVRAY	X		
REP. MIKE MILBURN	X		
REP. ART NOONAN	X		
REP. RON STOKER	X		
REP. PAT WAGMAN	X		
REP. BILL WARDEN	X		
REP. JONATHAN WINDY BOY	X		

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EXHIBIT 8
DATE 1-26-05
HB HB 26

Amendments to House Bill No. 26
1st Reading Copy

Requested by Representative George Golie

For the House Human Services Committee

Prepared by Susan Byorth Fox
January 26, 2005 (2:47pm)

1. Title, line 6.
Following: "PROVIDER"
Insert: "UNDER CERTAIN CONDITIONS"

2. Page 1, line 18.
Strike: "For"
Insert: "Except as provided in subsection (3), for"

3. Page 1, line 21.
Insert: "(3) Subsection (2) is not applicable unless the health care provider has, by policy or practice, ensured that those persons providing independent professional services have insurance of a type and in the amount required by the rules and regulations of the medical staff, by the medical staff bylaws, or by other similar health care facility rules or regulations."

- END -

House of Representatives Committee on Human Services

EXHIBIT 9
DATE 1-26-05
HB HB 26

Testimony of Mark C. Rumans, M.D.
Chief of Staff, Deaconess Billings Clinic

In Support of House Bill Nos. 25 and 26

January 26, 2005

Madam Chairwoman and members of the committee, my name is Dr. Mark Rumans, Chief of Staff at Deaconess Billings Clinic in Billings Montana. I am also a practicing gastroenterologist and have been a physician at Deaconess Billings Clinic for almost nineteen years. Deaconess Billings Clinic is an integrated, foundation model organization like Mayo Clinic. It is a 200 physician multi-specialty group practice which is integrated with a 272 bed tertiary referral, Level II trauma hospital. DBC also has 6 regional branch clinic sites in Montana ranging from Bozeman to Miles City as well as two branch sites in Wyoming. We also have affiliate agreements to provide management services to 8 rural hospitals and every year 52 physicians in 18 specialties provide outreach specialty clinics for residents of rural Montana, Wyoming, and North Dakota. This last year, DBC spent nearly $7 million in malpractice insurance coverage. All though we have had some success in controlling our malpractice premiums by participating in a captive insurance pool with several other organizations, malpractice premiums continue to be a major expenditure of dollars for DBC. This is money that is subsequently unavailable for patient care staff as well as new technology to benefit our patients. We have also seen the effect that rising malpractice premiums have had in the ability to attract and retain high quality physicians in rural Montana. I believe the set of bills that are before you today are a good first step in addressing this problem and I would like to speak in favor of House Bills 25 and 26, focusing my comments on House Bill 26, which deals with ostensible agency

HOUSE BILL NO. 26

House Bill 26 addresses the liability of a hospital when a physician practicing in the hospital may be considered an ostensible agent. Deaconess Billings Clinic, like many other organizations, has an open medical staff to any physician in Billings. A significant number of physicians not employed by DBC (such as anesthesiologists) provide care on a daily basis to patients within the hospital. Other organizations rely almost solely on physicians in private practice, not employed by the hospital to provide care to patients in the hospital. These physicians are not acting on behalf of the hospital nor are they agents of the hospital all though it can be difficult for patients to know if the physician is employed or not by the hospital. Currently, DBC and other hospitals can be found liable for the acts of these physicians even though the physician does not have the authority to act for the hospital. I would like to speak as a proponent for House Bill 26 as it significantly clarifies the organization's liability when an act or omission occurs by an individual who is not acting under authority for the organization. Hospitals still need to be diligent in privileging and credentialing physicians on its medical staff as this is one of the first key steps in ensuring quality of care delivered to patients within the hospital. DBC through its bylaws requires members of the medical staff to have insurance. We therefore support the amendment offered in section 3.

Madam Chairwoman and members of the committee, I would like to thank you for your attention and I am available for recall should the committee have any questions.

CONTACT:
Jani McCall
Lobbyist
406-670-3084

Montana House of Representatives
Visitors Register

HUMAN SERVICES COMMITTEE **Date** 1/26/05

Bill No. HB26 **Sponsor(s)** Rep. G. Golie

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Name and Address	Representing	Support	Oppose	Inf.
Mike Foster	SVH	✓		
MICHAEL BRAUN, MD	RMHN	✓		
Brian Criss	UHCHD	X		
Mark Runnion M.D.	Concerned Billings Citizen	—		
John V. Johnson	Myself RMHN	✓		
Martin L Wangen	MT Podiatric Med Assoc	✓		
Les Berry	UMIA	✓		
Jami McCall	DBC	✓		
Tom Ebzery	SV, HR, SV	✓		
Pat Melby	MT Med Assn	✓		
Mark Taylor	MHA	✓		
Mona Jamison	The Doctors Co. MT Orthopaedic Soc.	✓		
AJ Smith	MTHA	✓		
Joe MAZUREK	BCBSMT	✓		
Steve Yarbel	MT Comm For Maternal Child & Infant Health	✓		
Rose Hughes	MT Health Care Assn	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

/s/HumServVisitorReg.sample2003

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON HUMAN SERVICES

Call to Order: By **VICE CHAIRMAN TOM FACEY**, on February 2, 2005 at 3:00 P.M., in Room 472 Capitol.

ROLL CALL

Members Present:

Rep. Arlene Becker, Chairman (D)
Rep. Tom Facey, Vice Chairman (D)
Rep. Don Roberts, Vice Chairman (R)
Rep. Mary Caferro (D)
Rep. Emelie Eaton (D)
Rep. Gordon R. Hendrick (R)
Rep. Teresa K. Henry (D)
Rep. Dave McAlpin (D)
Rep. Tom McGillvray (R)
Rep. Mike Milburn (R)
Rep. Art Noonan (D)
Rep. Ron Stoker (R)
Rep. Pat Wagman (R)
Rep. Bill Warden (R)
Rep. Jonathan Windy Boy (D)

Members Excused: Rep. William J. Jones (R)

Members Absent: None.

Staff Present: Susan Fox, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted:	HB 395, 1/27/2005
Executive Action:	HB 24, Do Pass As Amended
	HB 25, Do Pass As Amended
	HB 26, Do Pass As Amended
	HB 31, Tabled; HB 59, Tabled
	HB 217, Tabled; HB 289, Tabled

EXECUTIVE ACTION ON HB 59

Motion/Vote: REP. FACEY moved that HB 59 BE TABLED. Motion carried unanimously by voice vote 16-0. REP. JONES voted by proxy.

EXECUTIVE ACTION ON HB 217

Motion/Vote: REP. FACEY moved that HB 217 BE TABLED. Motion carried unanimously by voice vote 16-0. REP. JONES voted by proxy.
{Tape: 2; Side: B; Approx. Time Counter: 8.5 - 14.8}

EXECUTIVE ACTION ON HB 25

Motion: REP. ROBERTS moved that HB 25 DO PASS.

Motion: REP. FACEY moved that HB 25 BE AMENDED.
EXHIBIT(huh26a05)

Discussion:

REP. FACEY explained the effective date was changed to July 1, 2005.

Vote: Motion carried unanimously by voice vote 16-0. REP. JONES voted by proxy.

Motion/Vote: REP. ROBERTS moved that HB 25 DO PASS AS AMENDED. Motion carried unanimously by voice vote 16-0. REP. JONES voted by proxy.
{Tape: 2; Side: B; Approx. Time Counter: 14.8 - 17.1}

EXECUTIVE ACTION ON HB 26

Motion: REP. ROBERTS moved that HB 26 DO PASS.

Motion: REP. WINDY BOY moved that HB 26 BE AMENDED.
EXHIBIT(huh26a06)

Discussion:

Mr. Al Smith explained the amendment. Current practices are to continue. Hospitals will require independent health care providers to have their own insurance.

Vote: **Motion carried unanimously by voice vote 16-0. REP. JONES voted by proxy.**

Motion: **REP. FACEY moved that HB 26 BE AMENDED.**
EXHIBIT(huh26a07)

Discussion:

REP. FACEY explained that it changed the effective date to July 1, 2005.

Vote: **Motion carried unanimously by voice vote 16-0. REP. JONES voted by proxy.**

Motion/Vote: **REP. ROBERTS moved that HB 26 DO PASS AS AMENDED. Motion carried unanimously by voice vote 16-0. REP. JONES voted by proxy.**
{Tape: 2; Side: B; Approx. Time Counter: 17.1 - 21.4}

EXECUTIVE ACTION ON HB 64

Motion: **REP. ROBERTS moved that HB 64 DO PASS.**

Discussion:

Ms. Susan Fox, Legislative Staffer explained about "health care provider" being inserted in another part of the bill. There had been some confusing information at the hearing. She defined the terms of "health care provider" and "physician" that are used by a medical legal panel.

Mr. Pat Melby explained that the definition used for "health care provider," as defined in 27-6-103, involves anyone who goes before a medical legal panel. He knew of no medical malpractice cases against APRN's or CRNA's. They usually practice under the supervision of a physician. Concerning Page 1, Lines 24 and 26, "physician" was used deliberately because a podiatrist could testify against a physician without Subsection 2. Under

HOUSE OF REPRESENTATIVES
Roll Call
HUMAN SERVICES COMMITTEE

DATE 2 - 2 - 05

NAME	PRESENT	ABSENT	EXCUSED
REP. ARLENE BECKER, CHAIR	X		
REP. TOM FACEY, VICE CHAIR	X		
REP. DON ROBERTS, VICE CHAIR	X		
REP. MARY CAFERRO	X		
REP. EMELIE EATON	X		
REP. GORDON HENDRICK	X		
REP. TERESA HENRY	X		
REP. WILLIAM JONES			X
REP. DAVE McALPIN	X		
REP. TOM McGILLVRAY	X		
REP. MIKE MILBURN	X		
REP. ART NOONAN	X		
REP. RON STOKER	X		
REP. PAT WAGMAN	X		
REP. BILL WARDEN	X		
REP. JONATHAN WINDY BOY	X		

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COMMITTEE PROXY

DATE: 2/2/05

I request to be excused from the Health & Human Services

Committee because of other commitments. I desire to leave my proxy vote with:

Bill Warden

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

HOUSE BILL/AMENDMENT	AYE	NO
HB 002401 .ash	✓	
HB 02402 .ash	✓	
HB 24	✓	
HB 58 Table	✓	
HB 217 Table	✓	
HB 2501-Ash	✓	
HB25	✓	
HB2601 ash	✓	
HB 2602 Ash	✓	
HB 26	✓	
HB 31 Reversed Tabled		✓
HB6402	✓	

SENATE BILL/AMENDMENT	AYE	NO
HB 289 Table	✓	

Rep./Sen. _____ (Signature)

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EXHIBIT 6
DATE 2-2-05
HB HB 26

Amendments to House Bill No. 26
1st Reading Copy

Requested by Representative George Golie

For the House Human Services Committee

Prepared by Susan Byorth Fox
January 26, 2005 (2:47pm)

1. Title, line 6.
Following: "PROVIDER"
Insert: "UNDER CERTAIN CONDITIONS"

2. Page 1, line 18.
Strike: "For"
Insert: "Except as provided in subsection (3), for"

3. Page 1, line 21.
Insert: "(3) Subsection (2) is not applicable unless the health care provider has, by policy or practice, ensured that those persons providing independent professional services have insurance of a type and in the amount required by the rules and regulations of the medical staff, by the medical staff bylaws, or by other similar health care facility rules or regulations."

- END -

EXHIBIT 7
DATE 2-2-05
HB HB 26

Amendments to House Bill No. 26
1st Reading Copy

Requested by Representative Tom Facey

For the House Human Services Committee

Prepared by Susan Byorth Fox
February 2, 2005 (2:48pm)

1. Title, line 9.
Following: "PROVIDING"
Insert: "AN EFFECTIVE DATE AND"

2. Page 1, line 21.
Following: section 1
Insert: "NEW SECTION. **Section 2. {standard} Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act]."
Insert: "NEW SECTION. **Section 3. {standard} Effective date.** [This act] is effective July 1, 2005."
Renumber: subsequent section

- END -

HOUSE STANDING COMMITTEE REPORT

February 4, 2005

Mr. Speaker:

We, your committee on **Human Services** recommend that **House Bill 26** (first reading copy -- white) **do pass as amended.**

Signed: Arlene Becker
Representative Arlene Becker, Chair

And, that such amendments read:

1. Title, line 6.
Following: "PROVIDER"
Insert: "UNDER CERTAIN CONDITIONS"

2. Title, line 9.
Following: "PROVIDING"
Insert: "AN EFFECTIVE DATE AND"

3. Page 1, line 18.
Strike: "For"
Insert: "Except as provided in subsection (3), for"

4. Page 1, line 21.
Insert: "(3) Subsection (2) is not applicable unless the health care provider has, by policy or practice, ensured that those persons providing independent professional services have insurance of a type and in the amount required by the rules and regulations of the medical staff, by the medical staff bylaws, or by other similar health care facility rules or regulations."

5. Page 1, line 21.
Following: section 1
Insert: "NEW SECTION. **Section 2. Saving clause.** [This act]

Committee Vote:
Yes 16, No 0.

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does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act]."

Insert: "NEW SECTION. **Section 3. Effective date.** [This act] is effective July 1, 2005."

Renumber: subsequent section

- END -

Total 0

Absent or not voting: None.
Total 0

HB 298 - Representative Clark moved **HB 298** do pass. Motion carried as follows:

Ayes: Bergren, Bixby, Branae, Buzzas, Caferro, Callahan, Campbell, Clark, Cohenour, Dickenson, Dowell, Driscoll, Eaton, Facey, Franklin, Furey, Gallik, Galvin-Halcro, Golie, Grinde, Groesbeck, Gutsche, Hamilton, Harris, Henry, Hiner, Jacobson, Jayne, Jent, W. Jones, Jopek, Juneau, Kaufmann, Keane, Lenhart, Lindeen, McAlpin, McNutt, Mendenhall, Musgrove, Noennig, Noonan, Parker, Raser, Roberts, Sesso, Small-Eastman, Villa, Wanzenried, Ward, Wilson, Windham, Windy Boy, Wiseman, Mr. Speaker.
Total 55

Noes: Andersen, Arntzen, Balyeat, Barrett, D. Brown, R. Brown, Butcher, Everett, Glaser, Hawk, Heinert, Hendrick, Himmelberger, Jackson, L. Jones, Klock, Koopman, Lake, Lambert, Lange, MacLaren, Maedje, Malcolm, McGillvray, McKenney, Milburn, Morgan, A. Olson, B. Olson, Peterson, Rice, Ripley, Ross, Sales, Sinrud, Sonju, Stahl, Stoker, Taylor, Wagman, Waitschies, Warden, Wells, Witt.
Total 44

Voted Absentee: Malcolm, No.

Excused: None.
Total 0

Absent or not voting: Becker.
Total 1

HB 26 - Representative Golie moved **HB 26** do pass. Motion carried as follows:

Ayes: Arntzen, Barrett, Becker, Bixby, Branae, D. Brown, R. Brown, Butcher, Buzzas, Caferro, Callahan, Campbell, Clark, Cohenour, Dickenson, Dowell, Driscoll, Eaton, Everett, Facey, Franklin, Furey, Galvin-Halcro, Glaser, Golie, Grinde, Gutsche, Hamilton, Harris, Hawk, Heinert, Hendrick, Henry, Himmelberger, Hiner, Jackson, Jacobson, Jent, L. Jones, W. Jones, Jopek, Juneau, Kaufmann, Keane, Klock, Koopman, Lake, Lambert, Lange, Lenhart, Lindeen, MacLaren, Maedje, Malcolm, McAlpin, McGillvray, McKenney, McNutt, Mendenhall, Milburn, Morgan, Musgrove, Noonan, A. Olson, B. Olson, Parker, Peterson, Raser, Roberts, Ross, Sales, Sesso, Sinrud, Small-Eastman, Sonju, Stahl, Stoker, Taylor, Villa, Wagman, Waitschies, Wanzenried, Ward, Warden, Wells, Wilson, Windham, Windy Boy, Wiseman, Witt, Mr. Speaker.
Total 91

Noes: Andersen, Balyeat, Gallik, Groesbeck, Jayne, Noennig, Rice, Ripley.
Total 8

Voted Absentee: Malcolm, Aye.

Excused: None.
Total 0

Absent or not voting: Bergren.
Total 1

HB 457 - Representative Noennig moved **HB 457** do pass. Motion carried as follows:

Ayes: Andersen, Arntzen, Balyeat, Barrett, Becker, Bergren, Bixby, Branae, D. Brown, Buzzas, Caferro, Callahan, Campbell, Clark, Cohenour, Dickenson, Dowell, Driscoll, Eaton, Facey, Furey, Gallik, Galvin-Halcro, Glaser, Grinde, Groesbeck, Gutsche, Hamilton, Harris, Hawk, Heinert, Hendrick, Himmelberger, Jacobson, Jayne, Jent, L. Jones, W. Jones, Jopek, Juneau, Kaufmann, Keane, Klock, Koopman, Lake, Lambert, Lange, Lenhart, Lindeen, MacLaren, Maedje, Malcolm, McAlpin, McGillvray, McKenney, McNutt, Mendenhall, Milburn, Morgan,

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Lindeen, MacLaren, Malcolm, McAlpin, McGillvray, McKenney, McNutt, Milburn, Morgan, Musgrove, Noennig, Noonan, A. Olson, B. Olson, Parker, Peterson, Raser, Ripley, Roberts, Ross, Sesso, Small-Eastman, Stoker, Taylor, Villa, Waitschies, Wanzenried, Ward, Warden, Wilson, Windham, Windy Boy, Wiseman, Mr. Speaker.
Total 83

Noes: Butcher, Everett, Jayne, L. Jones, Koopman, Maedje, Mendenhall, Rice, Sales, Sinrud, Sonju, Stahl, Wagman, Wells, Witt.
Total 15

Excused: Harris.
Total 1

Absent or not voting: Hamilton.
Total 1

THIRD READING OF BILLS

The following bills having been read three several times, title and history agreed to, were disposed of in the following manner:

HB 26 passed as follows:

Ayes: Andersen, Arntzen, Barrett, Becker, Bergren, Bixby, Branae, D. Brown, R. Brown, Butcher, Buzzas, Caferro, Callahan, Campbell, Clark, Cohenour, Dickenson, Driscoll, Eaton, Everett, Facey, Franklin, Furey, Galvin-Halcro, Glaser, Grinde, Groesbeck, Gutsche, Hamilton, Hawk, Heinert, Hendrick, Henry, Himmelberger, Hiner, Jackson, Jacobson, Jent, L. Jones, W. Jones, Jopek, Juneau, Kaufmann, Keane, Klock, Koopman, Lambert, Lange, Lenhart, Lindeen, Maedje, Malcolm, McAlpin, McGillvray, McKenney, McNutt, Mendenhall, Milburn, Morgan, Musgrove, Noennig, Noonan, A. Olson, B. Olson, Parker, Peterson, Raser, Roberts, Ross, Sales, Sesso, Sinrud, Small-Eastman, Sonju, Stahl, Stoker, Taylor, Villa, Wagman, Waitschies, Wanzenried, Ward, Warden, Wells, Wilson, Windham, Windy Boy, Wiseman, Witt, Mr. Speaker.
Total 90

Noes: Balyeat, Gallik, Jayne, MacLaren, Rice, Ripley.
Total 6

Excused: Harris.
Total 1

Absent or not voting: Dowell, Golie, Lake.
Total 3

HB 298 passed as follows:

Ayes: Balyeat, Becker, Bergren, Bixby, Branae, Buzzas, Caferro, Callahan, Campbell, Clark, Cohenour, Dickenson, Driscoll, Eaton, Facey, Franklin, Furey, Gallik, Galvin-Halcro, Golie, Grinde, Groesbeck, Gutsche, Hamilton, Henry, Hiner, Jacobson, Jayne, Jent, L. Jones, W. Jones, Jopek, Juneau, Kaufmann, Keane, Lenhart, Lindeen, McAlpin, McGillvray, Musgrove, Noennig, Noonan, Parker, Raser, Roberts, Sesso, Small-Eastman, Villa, Wanzenried, Wilson, Windham, Windy Boy, Wiseman, Mr. Speaker.
Total 54

Noes: Andersen, Arntzen, Barrett, D. Brown, R. Brown, Butcher, Everett, Glaser, Hawk, Heinert, Hendrick, Himmelberger, Jackson, Klock, Koopman, Lambert, Lange, MacLaren, Maedje, Malcolm, McKenney, McNutt, Mendenhall, Milburn, Morgan, A. Olson, B. Olson, Peterson, Rice, Ripley, Ross, Sales, Sinrud, Sonju, Stahl, Stoker, Taylor, Wagman, Waitschies, Ward, Warden, Wells, Witt.
Total 43

Excused: Harris.
Total 1

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HOUSE BILL NO. 26

INTRODUCED BY GOLIE

BY REQUEST OF THE LEGISLATIVE COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT FOR PURPOSES OF A MEDICAL MALPRACTICE CLAIM, LIABILITY MAY NOT BE IMPOSED ON A HEALTH CARE PROVIDER UNDER CERTAIN CONDITIONS FOR AN ACT OR OMISSION BY A PERSON OR ENTITY ALLEGED TO HAVE BEEN AN OSTENSIBLE AGENT OF THE HEALTH CARE PROVIDER AT THE TIME THAT THE ACT OR OMISSION OCCURRED; AMENDING SECTION 28-10-103, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 28-10-103, MCA, is amended to read:

"28-10-103. Actual versus ostensible agency -- limitation. (1) An agency is either actual or ostensible. An agency is actual when the agent is really employed by the principal. An agency is ostensible when the principal intentionally or by want of ordinary care causes a third person to believe another to be ~~his~~ the principal's agent ~~who~~ when that person is not really employed by ~~him~~ the principal.

(2) ~~For~~ EXCEPT AS PROVIDED IN SUBSECTION (3), FOR purposes of a malpractice claim, as defined in 27-6-103, liability may not be imposed on a health care provider, as defined in 27-6-103, for an act or omission by a person or entity alleged to have been an ostensible agent of the health care provider at the time that the act or omission occurred.

(3) SUBSECTION (2) IS NOT APPLICABLE UNLESS THE HEALTH CARE PROVIDER HAS, BY POLICY OR PRACTICE, ENSURED THAT THOSE PERSONS PROVIDING INDEPENDENT PROFESSIONAL SERVICES HAVE INSURANCE OF A TYPE AND IN THE AMOUNT REQUIRED BY THE RULES AND REGULATIONS OF THE MEDICAL STAFF, BY THE MEDICAL STAFF BYLAWS, OR BY OTHER SIMILAR HEALTH CARE FACILITY RULES OR REGULATIONS."

NEW SECTION. **SECTION 2. SAVING CLAUSE.** [THIS ACT] DOES NOT AFFECT RIGHTS AND DUTIES THAT MATURED, PENALTIES THAT WERE INCURRED, OR PROCEEDINGS THAT WERE BEGUN BEFORE [THE EFFECTIVE DATE OF THIS ACT].

NEW SECTION. **SECTION 3. EFFECTIVE DATE.** [THIS ACT] IS EFFECTIVE JULY 1, 2005.

NEW SECTION. **Section 4. Applicability.** [This act] applies to malpractice claims that arise after [the effective date of this act].

- END -

MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on March 4, 2005 at 8:05 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Mike Wheat, Chairman (D)
Sen. Jon Ellingson (D)
Sen. Jesse Laslovich (D)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Jim Shockley (R)

Members Excused: Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jeff Mangan (D)
Sen. Dan McGee (R)

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 24, 3/1/2005; HB 26, 3/1/2005; HB 25, 3/1/2005; HB 64, 3/1/2005; HB 222, 3/1/2005; HB 331, 3/1/2005
Executive Action: None.

malpractice insurance that may do the most good in the state. He said that states, where they do not have the bill, have seen significant declines in the number of malpractice lawsuits filed and the amounts of money spent on the defense of medical malpractice cases just by adopting an "I'm sorry" policy. He provided information regarding a policy adopted by the University of Michigan Health System.

EXHIBIT(jus48a04)

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

{Tape: 1; Side: A; Approx. Time Counter: 24 - 25.4}

Closing by Sponsor:

REP. GOLIE said that HB 24 is part of the solution, and it opens up communication to reduce medical malpractice claims resulting in less litigation. HB 24 and the other parts of the solution package are intended to stabilize rates and keep many of the physicians, particularly in rural Montana, practicing medicine. He added that HB 24 did not restrict any legal rights. He requested the Committee's support of HB 24.

HEARING ON HB 26

{Tape: 1; Side: B; Approx. Time Counter: 6.9 - 7.8}

Opening Statement by Sponsor:

REP. GEORGE GOLIE (D), HD 20, said that HB 26 clarifies the liability among health care providers. Many times, a physician practicing in a hospital is not an employee of the hospital. HB 26 is needed because a patient does not always know whether the physician is an employee or agent of the hospital. Therefore, the hospital can be found liable for a physician who is not on staff on the theory that the physician was an ostensible agent of the hospital. An ostensible agent is a person who has the apparent authority to act for the hospital even if actual authority has not been confirmed. HB 26 provides that a person or entity alleged to have been the ostensible agent of their health care provider may not impose liability on a health care provider for an act or omission.

Closing by Sponsor:

REP. GOLIE said that HB 26 is another piece of legislation that originated from the SJR 32 study, and it clarifies liability in a hospital setting. The amendment added in the House maintains that hospitals will keep their current practice of individual employees carrying medical malpractice insurance.

HEARING ON HB 25

Opening Statement by Sponsor:

{Tape: 1; Side: B; Approx. Time Counter: 17.8 - 18.9}

REP. DON ROBERTS (R), HD 56, said that HB 25 is a component of the SJR 32 resolutions. When a practitioner enters a hospital to perform a service, many of the people who may be assisting the practitioner may not be his or her employee, but have been hired by the hospital to act as an assistant of services. HB 25 provides protection for the health care provider. If people under the practitioner's employ commit an act or omission, the practitioner is not held liable. However, HB 25 does not absolve a health care provider from liability under 27-1-703, MCA.

Proponents' Testimony:

{Tape: 1; Side: B; Approx. Time Counter: 18.9 - 27.6}

Larry Riley, Utah Medical Insurance Association, provided background information related to a 1985 case, that arose in Helena. He said that the responsibility is needed for those acts of negligence that people are directly responsible for and not stick somebody with responsibility when they had nothing to do with the problem. HB 26 clarifies that when a patient is in the hospital and the patient is harmed by the conduct of someone else, that person can be sued. However, the surgeon who had nothing to do with or who was not responsible for that conduct could not be sued.

Pat Melby, MMA, and Dr. Mark Rumans, Deaconess Billings Clinic, spoke in support of HB 25.

Dr. Bradley Anderson, Urologic Surgeon, Billings, provided written comments in support of HB 25.

EXHIBIT(jus48a06)
EXHIBIT(jus48a07)

MONTANA SENATE
2005 LEGISLATURE

ROLL CALL

JUDICIARY

DATE 3-4-05

NAMES	PRESENT	ABSENT	EXCUSED
SEN. MICHAEL WHEAT, CHAIRMAN	✓		
SEN. BRENT CROMLEY			✓
SEN. AUBYN CURTISS			✓
SEN. JON ELLINGSON			
SEN. JESSE LASLOVICH	✓		
SEN. JEFF MANGAN			✓
SEN. DAN McGEE			✓
SEN. LYNDA MOSS	✓		
SEN. JERRY O'NEIL	✓		
SEN. GERALD PEASE	✓		
SEN. GARY PERRY	✓		
SEN. JIM SHOCKLEY	✓		
VALENCIA LANE, LSD	✓		
MARI PREWETT, COMMITTEE SECRETARY	✓		

Exhibit No. 5
Date 3-4-05
Bill No. HB 26

Senate Judiciary Committee

Testimony of Mark C. Rumans, M.D.
Chief of Staff, Deaconess Billings Clinic

In Support of House Bill No. 24, 25, 26 and 64

March 4, 2005

Mr. Chairman and members of the committee, my name is Dr. Mark Rumans, Chief of Staff at Deaconess Billings Clinic (DBC) in Billings Montana. I am also a practicing gastroenterologist and have been a physician at DBC for almost nineteen years. Deaconess Billings Clinic is an integrated, foundation-model organization like Mayo Clinic. It is a 200-physician multi-specialty group practice, which is integrated with a 272-bed tertiary referral, Level II trauma hospital. DBC also has 6 regional branch clinic sites in Montana ranging from Bozeman to Miles City as well as two branch sites in Wyoming. Affiliate agreements are in place to provide management services to 8 rural hospitals. Each year 52 physicians in 18 specialties provide outreach specialty clinics for residents of rural Montana, Wyoming, and North Dakota. This last year, DBC spent nearly $7 million in malpractice insurance coverage. Although we have had some success in controlling our malpractice premiums by participating in a captive insurance pool with several other organizations, malpractice premiums continue to be a major expenditure of dollars for DBC. This is money that is subsequently unavailable for patient care staff as well as new technology to benefit our patients. We have also seen the effect that rising malpractice premiums have had in the ability to attract and retain high-quality physicians in rural Montana. I believe House Bills 24, 25, 26 and 64, that are before you today, are a good first step in addressing this problem.

HOUSE BILL NO. 24

This bill allows physicians to express an apology or sympathy without that expression being an admission of liability in a malpractice claim. Medicine has recently been accused of becoming too impersonal and lacking compassion. At the same time, patients are significantly more actively involved in their care, increasingly sophisticated, and desirous of transparency in their care. They are asking for and should be receiving open and honest answers to their questions about their care. Unfortunately, when there has been an unexpected adverse outcome, physicians have been counseled to withhold expressions of remorse or sympathy because of the fear that this would be used as an admission of "legal liability". We should be taking the opposite approach and encouraging physicians and other providers to have compassionate and transparent discussions with patients. At DBC, we have encouraged these types of discussions because of our deep commitment to patient safety and quality of care. We believe that honestly discussing all aspects of care with patients, even those aspects of care that are not ideal, in a compassionate, sympathetic manner will help improve the quality of care that we can deliver to all patients. This bill would help encourage these types of discussions and I fully support it. Condolence, commiseration, compassion, sympathy, and benevolence are all behaviors that should be encouraged and supported by all of us involved in today's modern health care system.

House Bill No. 26

House Bill 26 addresses the liability of a hospital when a physician practicing in the hospital may be considered an ostensible agent. DBC, like may other organizations, has an open medical staff to any physician in Billings. A significant number of physicians not employed by DBC (such as anesthesiologists) provide care on a daily basis to patients within the hospital. Other organizations rely almost solely on physicians in private practice, not employed by the hospital to provide care to patients in the hospital. These physicians are not acting on behalf of the

hospital nor are they agents of the hospital although it can be difficult for patients to know if the physician is employed or not by the hospital. Currently, DBC and other hospitals can be found liable for the acts of these physicians even though the physician does not have the authority to act for the hospital. I would like to speak as a proponent for House Bill 26 as it significantly clarifies the organization's liability when an act or omission occurs by an individual who is not acting under authority for the organization. Hospitals still need to be diligent in privileging and credentialing physicians on its medical staff as this is one of the first key steps in ensuring quality of care delivered to patients within the hospital. DBC, through its bylaws, requires members of the medical staff to have insurance.

HOUSE BILL NO. 64

This bill defines the qualifications for medical malpractice witnesses. Medical care today is very complex and frequently requires the expertise of specialty-trained physicians. Availability of specialists and diagnostic tests also varies dramatically from community to community in Montana. Because of these complexities, it is critical that an expert witness in a malpractice case thoroughly understands the details of the case and the standards of care. For example, as a board-certified gastroenterologist, I would not consider myself qualified to understand the details and the risks involved in caring for a very ill cardiac patient. I would rely on the expertise of a cardiologist who has cared for patients in a similar setting. This bill would ensure that physicians called to testify in malpractice cases are qualified to understand the numerous risks and benefits involved in taking care of complex medical or surgical patients. I would not ask a plumber to judge the work of an electrician just as I would not ask a gastroenterologist to judge the work of a cardiologist.

Mr. Chairman and members of the committee, I would like to thank you for your attention and I am available for recall should the committee have any questions.

CONTACT:

Jani McCall
Lobbyist
406-670-3084

DATE 3-4-05

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 24, HB 26, HB 64, HB 25

HB 222, HB 331

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Mona Jamison	442-5581	Mt Orthopedic Soc	24,26 64,25 222,331	✓	
Mona Jamison	442-5581	DOCTORS CO	24,25 26,64 222,331 and	✓	
MARK RABOLD	492-8789	ACEP	HB222	✓	
Pat Melby	442-7450	MT Med Ass'n	24,25,26 64,222 331		
Al Smith	443-3124	MTHA	24,25,26, 64,331 222	✓	X
LARRY E. RILEY	523-2500	Utah Med Ins Assoc	24,25,26 222,331		
Jim Sinks	916 532 6715	USAA	331		X
Jerry Kibbee	360-770 6925	PCIAA	331		X
Jami McCall	670-3084	Deaconess Billings Clinic	24,26,26 64,331		
Tom Ebzery	441-7531	SV Hotel, Rosary, St James Wheat	HB222 24,25,26 64	X	
Barbara Ranf	442-2405 ext 104	MT Chamber	24.26 64,25 222	X	
Roger Medland	442-9555	IIAM	331		X
Steve Yeakel	443 1674	MT Council for Maternal & Child Health	24,25,26, 64,222,331	X	
Riley Johnson	443-3797	NFIB	24,25,26 64,222,331	X	
Gloria Hermanson	449-2334	Ophthalmology/Optometry			X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 3-4-05

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 24, HB 26, HB 25, HB 64, HB 222, HB 331

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Mike Silvestro MD	728-1260	Rocky Mountain HealthCare	HB 24 25 26 222 331	X	
John D. Kon MD	2336589	Self	24 25 26 222 331	X	
Aaron Billin MD	665-2561	Self	24, 25, 26 222, 331	X	
Fred McMurray MD	238 1650	self	25 26 24 222 331	X	
Bradley W. Anderson MD	252-0244	Self	25, 26, 24 222, 331	X	
Mark Runn, MD	258-2655	Department BCS clinic	4, 25, 6, 22	X	
Jacqueline Lenmark	2-0230	Am. Ins. Assn	HB 24, 25, 26, 222	X	
Jacqueline Lenmark	2-0230	Am Ins. Assn	HB331		X
Joe Mazurek	457-2000	Blue Cross Blue Shield	HB 25, 25, 26 222, 64 H	X	
Joe Mazurek	457-2000	"	HB331		X
David Lane	652-0607	Hat Four In	HB 331		X
MARK TAYLOR	443-6820	MHA	24, 25, 26 64, 222, 331	X	
Frank Cote	3-9070	FUMIC	HB 331		X
Don Allen	3-7531	MAFA	HB 331		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 3-4-05

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 24, HB 26, HB 25, HB 64

HB 222, HB 331

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
MARTI L. WARGEW	443-1160	Montana Podiatric Medical Assoc	HB24, HB25,26 HB222	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on March 8, 2005 at 8:05 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Mike Wheat, Chairman (D)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jon Ellingson (D)
Sen. Jesse Laslovich (D)
Sen. Jeff Mangan (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gary L. Perry (R)
Sen. Jim Shockley (R)

Members Excused: Sen. Gerald Pease (D)

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted:	HB 474, 3/3/2005; HB 367, 3/3/2005; HB 425, 3/3/2005; HB 473, 3/3/2005; HB 429, 3/3/2005; HB 762, 3/3/2005; HB 615, 3/3/2005
Executive Action:	HB 24, HB 25, HB 26, HB 64, HB 110, HB 429

{Tape: 4; Side: B; Approx. Time Counter: 13.8 - 15.1}

Motion/Vote: **SEN. MANGAN moved that HB 25 BE CONCURRED IN. Motion carried unanimously by voice vote. SENATORS PEASE and MCGEE voted aye by proxy. SEN. WHEAT will carry the bill.**

EXECUTIVE ACTION ON HB 26

{Tape: 4; Side: B; Approx. Time Counter: 15.2 - 17.1}

Motion/Vote: **SEN. MANGAN moved that HB 26 BE CONCURRED IN. Motion carried unanimously by voice vote. SENATORS PEASE and MCGEE voted aye by proxy. SEN. WHEAT will carry the bill.**

EXECUTIVE ACTION ON HB 64

{Tape: 4; Side: B; Approx. Time Counter: 17.1 - 20.4}

Motion: **SEN. MANGAN moved that HB 64 BE CONCURRED IN.**

Discussion: **SEN. CROMLEY** spoke against HB 64 because it did nothing. He said the state already had good rules of evidence with regard to limiting expert testimony.

Vote: **SEN. MANGAN'S motion that HB 64 BE CONCURRED IN carried on a 9 to 2 voice vote. SENATORS O'NEIL and CROMLEY voted nay. SENATORS PEASE and MCGEE voted aye by proxy. SEN. PERRY will carry the bill.**

EXECUTIVE ACTION ON HB 110

{Tape: 4; Side: B; Approx. Time Counter: 20.4 - 24.5}

Motion/Vote: **SEN. LASLOVICH moved that HB 110 BE CONCURRED IN. Motion carried unanimously by voice vote. SENATORS PEASE and MCGEE voted aye by proxy. SEN. LASLOVICH will carry the bill.**

EXECUTIVE ACTION ON HB 216

Motion: **SEN. CROMLEY moved that HB 216 BE CONCURRED IN.**

Discussion: Amendments were requested.

SEN. CROMLEY withdrew his motion. No action was taken.

MONTANA SENATE
2005 LEGISLATURE

ROLL CALL

JUDICIARY

DATE 3-8-05

NAMES	PRESENT	ABSENT	EXCUSED
SEN. MICHAEL WHEAT, CHAIRMAN	X		
SEN. BRENT CROMLEY	X		
SEN. AUBYN CURTISS	X		
SEN. JON ELLINGSON	X		
SEN. JESSE LASLOVICH	X		
SEN. JEFF MANGAN	X		
SEN. DAN McGEE	X		
SEN. LYNDA MOSS	X		
SEN. JERRY O'NEIL	X		
SEN. GERALD PEASE			X
SEN. GARY PERRY	X		
SEN. JIM SHOCKLEY	X		
VALENCIA LANE, LSD			
MARI PREWETT, COMMITTEE SECRETARY			

PROXY VOTE

I, the undersigned, hereby authorize Senator Wheat to vote my proxy on any issue before the Senate Subcommittee Committee held on March 8, 2005.

ON ALL ISSUES

HB 24 - aye
HB 25 - aye
HB 26 - aye
HB 64 - aye
HB 116 - aye
HB 429 - Amendment aye as Amended - aye

Mike Bear
SENATOR
STATE OF MONTANA

PROXY VOTE

I, the undersigned, hereby authorize Senator Perry to vote my proxy on any issue before the Senate Judiciary Committee held on 3/8, 2005.

HB 24 - aye
HB 25 - aye
HB 26 - aye
HB 64 - aye
HB 110 - aye
HB 429
Amendment aye
as amended aye

SENATOR
STATE OF MONTANA

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** recommend that **House Bill 26** (third reading copy -- blue) **be concurred in.**

Signed: *Senator Mike Wheat, Chair*

To be carried by Senator Mike Wheat

- END -

Committee Vote:
Yes 11, No 0.

511207SC.ssc

2nd Reading - Committee of the Whole

HB 56 - Senator Balyeat moved **HB 56** be concurred in. Motion carried unanimously.

HB 138 - Senator Esp moved **HB 138** be concurred in. Motion carried unanimously.

HB 139 - Senator Tropila moved **HB 139** be concurred in. Motion carried unanimously.

HB 144 - Senator Gebhardt moved **HB 144** be concurred in. Motion carried with Senator Balyeat voting nay.

HB 178 - Senator Toole moved **HB 178** be concurred in. Motion carried unanimously.

HB 255 - Senator Weinberg moved **HB 255** be concurred in. Motion carried unanimously.

HB 308 - Senator Tester moved **HB 308** be concurred in. Motion carried unanimously.

HB 347 - Senator Ellingson moved consideration of **HB 347** be placed at the bottom of the second reading board for the purpose of amendment. Motion carried.

HB 312 - Senator Ryan moved **HB 312** be concurred in. Motion carried with Senators Esp, McGee, and O'Neil voting nay.

HJR 4 - Senator Perry moved **HJR 4** be concurred in. Motion carried unanimously.

HJR 24 - Senator Larson moved **HJR 24** be concurred in. Motion carried unanimously.

HB 24 - Senator Moss moved **HB 24** be concurred in. Motion carried unanimously.

HB 25 - Senator Wheat moved **HB 25** be concurred in. Motion carried unanimously.

HB 26 - Senator Wheat moved **HB 26** be concurred in. Motion carried unanimously.

HB 54 - Senator Pease moved **HB 54** be concurred in. Motion carried unanimously.

HB 64 - Senator Perry moved **HB 64** be concurred in. Motion carried with Senators Cromley and O'Neil voting nay.

HB 110 - Senator Laslovich moved **HB 110** be concurred in. Motion carried unanimously.

HB 112 - Senator Cooney moved **HB 112** be concurred in. Motion carried with Senator McGee voting nay.

HB 154 - Senator Lewis moved **HB 154** be concurred in. Motion carried unanimously.

HB 160 - Senator Tropila moved **HB 160** be concurred in. Motion carried with Senators Balyeat, Curtiss, Laible, and Stapleton voting nay.

HB 203 - Senator Shockley moved **HB 203** be concurred in. Motion carried unanimously.

HB 215 - Senator Pease moved **HB 215** be concurred in. Motion carried unanimously.

HB 266 - Senator Bales moved **HB 266** be concurred in. Motion carried unanimously.

HB 313 - Senator Lewis moved **HB 313** be concurred in. Motion carried with Senator Esp voting nay.

HB 439 - Senator Harrington moved **HB 439** be concurred in. Motion carried as follows:

Yeas: Cobb, Cocchiarella, Cooney, Cromley, Ellingson, Elliott, Gallus, Gillan, Hansen, Harrington, Hawks, Kitzenberg, Larson, Laslovich, Lind, Mangan, Moss, Pease, Roush, Ryan, Schmidt, Smith, Squires, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.
Total 29

Nays: Bales, Balyeat, Barkus, Black, Brueggeman, Curtiss, Esp, Essmann, Gebhardt, Grimes, Keenan, Laible, Lewis,

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3rd Reading

HB 25 concurred in as follows:

Yeas: Bales, Balyeat, Barkus, Black, Brueggeman, Cocchiarella, Cooney, Cromley, Curtiss, Ellingson, Elliott, Esp, Essmann, Gallus, Gebhardt, Gillan, Grimes, Hansen, Harrington, Hawks, Keenan, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, Mangan, McGee, Moss, O'Neil, Pease, Perry, Roush, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.
Total 49

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: Cobb.
Total 1

HB 26 concurred in as follows:

Yeas: Bales, Balyeat, Barkus, Black, Brueggeman, Cocchiarella, Cooney, Cromley, Curtiss, Ellingson, Elliott, Esp, Essmann, Gallus, Gebhardt, Gillan, Grimes, Hansen, Harrington, Hawks, Keenan, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, Mangan, McGee, Moss, O'Neil, Pease, Perry, Roush, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.
Total 49

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: Cobb.
Total 1

HB 54 concurred in as follows:

Yeas: Bales, Balyeat, Barkus, Black, Brueggeman, Cocchiarella, Cooney, Cromley, Curtiss, Ellingson, Elliott, Esp, Essmann, Gallus, Gebhardt, Gillan, Grimes, Hansen, Harrington, Hawks, Keenan, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, Mangan, McGee, Moss, O'Neil, Pease, Perry, Roush, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.
Total 49

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: Cobb.
Total 1

HB 56 concurred in as follows:

Yeas: Bales, Balyeat, Barkus, Black, Brueggeman, Cocchiarella, Cooney, Cromley, Curtiss, Ellingson, Elliott, Esp, Essmann, Gallus, Gebhardt, Gillan, Grimes, Hansen, Harrington, Hawks, Keenan, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, Mangan, McGee, Moss, O'Neil, Pease, Perry, Roush, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.
Total 49

AN ACT PROVIDING THAT FOR PURPOSES OF A MEDICAL MALPRACTICE CLAIM, LIABILITY MAY NOT BE IMPOSED ON A HEALTH CARE PROVIDER UNDER CERTAIN CONDITIONS FOR AN ACT OR OMISSION BY A PERSON OR ENTITY ALLEGED TO HAVE BEEN AN OSTENSIBLE AGENT OF THE HEALTH CARE PROVIDER AT THE TIME THAT THE ACT OR OMISSION OCCURRED; AMENDING SECTION 28-10-103, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 28-10-103, MCA, is amended to read:

"28-10-103. Actual versus ostensible agency -- limitation. (1) An agency is either actual or ostensible. An agency is actual when the agent is really employed by the principal. An agency is ostensible when the principal intentionally or by want of ordinary care causes a third person to believe another to be ~~his~~ the principal's agent ~~who~~ when that person is not really employed by ~~him~~ the principal.

(2) Except as provided in subsection (3), for purposes of a malpractice claim, as defined in 27-6-103, liability may not be imposed on a health care provider, as defined in 27-6-103, for an act or omission by a person or entity alleged to have been an ostensible agent of the health care provider at the time that the act or omission occurred.

(3) Subsection (2) is not applicable unless the health care provider has, by policy or practice, ensured that those persons providing independent professional services have insurance of a type and in the amount required by the rules and regulations of the medical staff, by the medical staff bylaws, or by other similar health care facility rules or regulations."

Section 2. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 3. Effective date. [This act] is effective July 1, 2005.

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Section 4. Applicability. [This act] applies to malpractice claims that arise after [the effective date of this act].

- END -